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247 Mo. 163, 152 S. W. 598. However, past illicit cohabitation is not sufficient consideration to support a promise. *Binnington v. Wallis*, 4 B. & Ald. 650. Nor will the moral obligation arising from such be good consideration. *Eastwood v. Kenyon*, 11 A. & E. 438. But if supported by other good consideration, or under seal, such a contract is enforceable. *McGuitty v. Wilhite*, *supra*; *Brown v. Kinsey*, 81 N. C. 245. *A fortiori*, a promise made in consideration of the cessation of past illicit cohabitation is not void for illegality, there being nothing in such a promise contrary to public policy, but rather otherwise. A contract made to end these relations by marriage, as a matter of policy, should be even more favorably regarded by the law. *Hotchkiss v. Hodge*, 38 Barb. (N. Y.) 117. Clearly such a contract is valid from the point of view of consideration since both sides agree to do something they are not bound to do. It is submitted, therefore, that the court erred in concluding that the agreement was void.

INJUNCTION — ACTS RESTRAINED — FORMER EMPLOYEE SOLICITING OLD CUSTOMERS FOR RIVAL. — The plaintiff laundry company employed the defendant as a collector and gave him lists of certain of its customers. The defendant agreed not to solicit these customers for any other concern. Later he left the plaintiff's employ and began to canvas the same customers for a rival laundry. *Held*, that the defendant will be enjoined from soliciting or receiving laundry from any of the above customers. *Empire Steam Laundry v. Lozier*, 130 Pac. 1180 (Cal.).

The court disregards the agent's contract with the plaintiff and grants the injunction on the broad ground of preventing a breach of fiduciary duty. In closely analogous cases injunctions were granted against disclosure of trade secrets, on that ground. *Morison v. Moat*, 9 Hare 241; *Peabody v. Norfolk*, 98 Mass. 452. True, some courts in these cases find an implied contract not to disclose, or argue that trade secrets are property rights which equity protects; but the first explanation is a mere fiction, and the "property right" is protected against violation by the fiduciary only. See 11 HARV. L. REV. 262. On the grounds of a fiduciary relationship, the disclosure of confidential communications by an attorney, or the use and publication of private codes by one other than the originator, have been enjoined. *Evitt v. Price*, 1 Sim. 483; *Simmons Hardware Co. v. Waibel*, 1 So. Dak. 488, 47 N. W. 814. *Contra*, *Reuter's Telegram Co. v. Byron*, 43 L. J. Ch. 661. Similarly the use of lists of customers may be enjoined. *Robb v. Green*, [1895] 2 Q. B. 1; *Stevens v. Stiles*, 29 R. I. 399, 71 Atl. 802. *Cf. Lamb v. Evans*, [1893] 1 Ch. D. 218. But the principal case not merely prohibits the use of the plaintiff's lists, but enjoins all soliciting of customers whose names appeared there. The question, however, is substantially the same whether the agent makes use of the lists themselves, or of knowledge which he has acquired from them. The test in either case should be whether the lists were given to the agent in a fiduciary capacity. This is a question to be determined from the facts of the particular case, and any breach of the duty so imposed should be restrained. *Witkop & Holmes Co. v. Boyce*, 64 Misc. (N. Y.) 374, 118 N. Y. Supp. 461; *Salomon v. Hertz*, 40 N. J. Eq. 400, 2 Atl. 379.

INJUNCTIONS — ACTS ENJOINED — SUIT IN FOREIGN JURISDICTION. — The plaintiff had brought an action against the defendant in New York. While this was still pending, the plaintiff brought another action against the defendant on the same cause of action in North Carolina, the defendant's domicile. The defendant seeks an injunction restraining the plaintiff from further prosecution of the New York suit, on the ground that an attachment had been wrongfully sued out in New York and that there had been no personal service on the defendant in that state. *Held*, that the injunction will not be granted. *Carpenter, Baggott & Co. v. Hanes*, 77 S. E. 1101 (N. C.).

Formerly the view prevailed that a court of equity would never enjoin the

further prosecution of a suit commenced in a foreign jurisdiction. *Love v. Baker*, Freem. Ch. 125, 1 Ch. Cas. 67; *Carroll v. The Farmers' & Mechanics' Bank*, Har. (Mich.) 197; *Mead v. Merritt*, 2 Paige (N. Y.) 402. This view apparently obtains in Illinois to-day, on the ground that any other rule would be inconsistent with interstate harmony. *Harris v. Pullman*, 84 Ill. 20. This does not seem to follow, however, as the court of equity is not interfering with another state's proceedings; it is simply laying a personal prohibition upon the defendant. See 2 STORY, EQUITY JURISPRUDENCE, 13 ed., § 899. This is generally agreed to-day, and if necessary, courts will enjoin such suits. *Lord Portarlington v. Soulby*, 3 Mylne & Keen 104; *Kempson v. Kempson*, 58 N. J. Eq. 94. See 15 HARV. L. REV. 145. But in the absence of fraud or manifest injustice, the court will generally, in its discretion, refuse to interfere, as its decree may come into conflict with one rendered in the other state. *Carson v. Dunham*, 149 Mass. 52, 20 N. E. 312; *The Bank of Bellows Falls v. The Rulland & Burlington R. Co.*, 28 Vt. 470. In the principal case there would seem to be no such fraud or inequity as would justify the granting of the decree, and the case could be disposed of on this ground. But the court refuses the injunction because the defendant is not domiciled in North Carolina, reasoning that the jurisdiction of equity to enjoin a foreign suit is based on the theory that a resident of a state owes obedience to that state and that the state has a right to control his personal relations with other citizens of the state. This doctrine of allegiance is important in Roman law, but has no place in our law. See HOLLAND, ELEMENTS OF JURISPRUDENCE, 9 ed., 401. What the court probably means to say is that since an injunction can act only *in personam*, it should not be issued unless the court has some means of enforcing its decree. If the defendant is not domiciled in the state and has no property in the state which can be sequestered, the court has no means of rendering its decree effective and therefore the decision in the principal case seems clearly correct.

INSURANCE — RIGHTS OF APPLICANT — COMPANY LIABLE FOR AGENT'S FAILURE TO FORWARD APPLICATION. — The agent of the defendant insurance company negligently failed to forward to its home office an application for life insurance signed by the plaintiff's intestate a month before his death. But for this neglect the plaintiff's intestate would have been insured by the defendant. *Held*, that the plaintiff may recover in tort. *Duffie v. Banker's Life Ass'n of Des Moines*, 139 N. W. 1087 (Iowa).

The court reasons that because the defendant solicited business "under a franchise from the state," it was bound to give prompt attention to all applications. But the mere soliciting of an offer creates no duty to consider it. *Harris v. Nickerson*, L. R. 8 Q. B. 286. And the alleged franchise consists simply in the defendant's charter and license to write insurance. This license, like those issued to physicians, is a mere certificate of compliance with the police regulations governing the defendant's business. *Commonwealth v. Vrooman*, 164 Pa. 306, 320, 30 Atl. 217, 220. Certainly neither such a license nor a corporate charter imposes, without more, a duty to serve the public. Nor is the insurance business in itself a public calling. Any applicant may be rejected, even under statutes forbidding discriminatory rates. See *Queen Insurance Co. v. State*, 86 Tex. 250, 270, 24 S. W. 397, 404. Cf. CODE OF IOWA, 1907, § 1782. No public duty, therefore, bound the defendant to consider this application. On the other hand, any person who, at another's request, enters upon the transaction of business in his behalf, is liable, though unpaid, for negligence, even though it be non-feasance, in executing his commission. *Robinson v. Threadgill*, 13 Ired. (N. C.) 39; *Johnston v. Graham*, 14 U. C. C. P. 9. *Coadon v. Exter-Hall Brokerage Agency*, 142 N. Y. Supp. 548. In filling out an application the agent acts on behalf of the company. *Union*